IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2421 of 2001

with

SPECIAL CIVIL APPLICATION No 6365 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2421 of 2001

MRS KETTY A MEHTA for Petitioner No. 1-5

MR HD DAVE ASSTT GOVT PLEADER for Respondent No. 1-1/2

MR CL SONI for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 17/04/2002

COMMON ORAL JUDGEMENT

#. Heard Mrs.K.A.Mehta, learned advocate appearing on behalf of the petitioners - employees and Mr.H.D.Dave, learned AGP on behalf of the respondent No.1[a] & [b] State Authority as well as Mr.C.L.Soni, learned advocate for respondent - Company, appearing on behalf of the respective parties in these petitions.

#. In Special Civil Application No.2421 / 2001, RULE has been issued by this Court on 9th April, 2001 to be heard with Special Civil Application No.6365 / 1999. Similarly, in SCA No.6365 / 1999, Rule issued on 20th October, 1999 returnable on 24th November, 1999. Affidavit-in-reply filed on behalf of the respondent No.1 by Shri S.A. Kadari, Under Secretary, Industries and Mines Department on 29th February, 2000. Affidavit-in reply has also been filed on behalf of the respondent No.2 on 25th November, 1999 and thereafter, Rejoinder was filed by the petitioner on 13th January, 2000. Affidavit in-sur-Rejoinder and further affidavit of the petitioner in both these petitions are filed by the petitioner No.3 Shri N.J.Patel on 28th March, 2000. Further affidavit has been filed by the petitioner No.7 on 1st December, 2001 and thereafter, the respondent No.2 has filed further affidavit in reply to the rejoinder of the petitioner on 22nd March, 2000.

#. In Special Civil Application No.2421 / 2001, affidavit-in-reply filed by the respondent No.2 on 14th June, 2001 and no reply is filed by the respondent No.1 though they are relying upon affidavit in reply in Civil Application No.11704 / 2000 filed by Shri S.A.Kadari, Under Secretary, Industry and Mines Department dated 1st February, 2001 and Sur-Rejoinder dated 27th February, 2001 is filed by the respondent No.1. Mr.H.D.Dave, learned AGP has referred these two affidavits of respondent No.1 while making submissions in respect of both these petitions.

#. The brief facts giving rise to these petitions are as under :-

The petitioners were serving at Gandhinagar Unit of respondent No.2 Company as Junior Operator- E and were appointed during 1987 - 1991. In the year 1997, the Sate Government has decided either to privatize or close down certain public undertakings and their employees who had surplus, be given three options, viz. such employees may continue with the private management after privatisation, they can taken option of voluntary retirement scheme and thirdly, they can register their names as surplus

employees before the surplus cell which was to be administered through the Finance Department of the State of Gujarat. The persons who register their names in the surplus cell will be absorbed in the services of the State Government on availability of vacancy. For this purpose, the State Government has issued Circular dated 28th November, 1997 by the Finance Department which clearly stated that those persons who take the third option of registering themselves with the surplus cell will be required to be absorbed in the State Government as per the availability of vacancies. However, they will be offered employment in any cadre in any pay scale where the vacancies may be available and will also be considered for appointment in Panchayats, colleges, Universities, schools and other institutions governed by the State or semi- Government organizations. The petitioners gave option for being absorbed in the State service by registering their names as surplus employees in surplus cell. On 28th July, 1999, the State Government issued circular whereby it was pointed out that in the public undertakings, the surplus employees who will be rendered jobless because of the closing down of public undertakings, will only be given option of voluntary retirement scheme and those public undertakings going to be privatized, the employees serving in such undertakings, will be given only two options of either remaining with the private management or voluntary retirement scheme. However, in para-2 of the said circular, it was clearly stated that those public undertakings in which partly voluntary retirement scheme and partly surplus employment scheme is made applicable and some employees are already given alternative employment, in such public undertakings, those who have already registered themselves in the surplus cell by virtue of earlier circular dated 28th November, 1997, will continue to get advantage of the said scheme of alternative employment. Accordingly, the petitioners gave their third option in August, 1998 and they had added one condition namely the petitioners were working as Junior Operator - E and are doing technical work in the pay scale of Rs.950-1500/- and therefore, they should be given employment in the same cadre. However, by virtue of paras 3, 6 and 7 of the Government Circular dated 28th November, 1997, the Government can offer the petitioners employment in any scale and in any cadre and it was open to the petitioners either to accept or reject the same. According to the petitioners, they were not offered Government employment till 1999 and privatisation became obvious, the petitioners along with other five other preferred Special Civil Application No.6365 / 1999 and claimed that the Government may be directed to offer

them alternative employment and absorb them in clerical post in pay scale of Rs.950 - 1500, otherwise, alternative employment and absorb them in clerical post in pay scale of Rs.950-1500/-. In another alternative, the petitioners prayed that the State Government may absorb the petitioners in clerical cadre in the State Government service. It is also case of the petitioners that they have clearly pointed out that they were prepared to be absorbed in the equivalent cadre in the lower pay scale other than the pay scale of Class IV service. According to the petitioners, in reply to the said Special Civil Application No.6365 / 1999, it was pointed out that "In fact as per the Government scheme, the petitioners were entitled to be absorbed on the post carrying pay scale equivalent to the pay scale of the post which the petitioners were holding. However, according to the respondents, the petitioners cannot be absorbed in the clerical post in the State Government as the cadre carries higher pay scale of Rs.950-1500". It was further pointed out in the reply that "As per para C-1 of the Circular dated 28th November, 1997, if the Government could not post the incumbent who has opted for alternative employment within one year, he has to go under voluntary retirement scheme. However, in the interest of employees, the Government has not implemented such provisions in toto and employees herein given posting were allowed to continue in the company without any disturbance. All such employees are informed by GCEL management as there are no positions available in the grade of Rs.775-1025, the Government has allowed them to continue with GCEL - respondent No.2. Therefore, there was apprehension on the part of the petitioners that the respondent No.2 Management may remove them from service and hence, prayer made by the petitioners to absorb them in the scale of Rs.775-1025 in clerical cadre should not be entertained and needs to be rejected. It was further pointed out in affidavit filed by the respondent that "as the petitioners are in the grade of Rs.775 - 1025 [revised Rs.2610 - 3540] which is considered to be in Class IV category in the Government, the Government cannot post them in Class-III category which starts from Rs.950 - 1500 [revised Rs.3050 - 4500]. The demand of the petitioners needs to be rejected." It was further pointed out that the petitioners are already informed that their services with respondent No.2 shall continue with reference to their application opting for alternate employment in the Government, so the question of relieving them does not arise and no orders are required to be issued. It is further pointed out by the petitioners that thereafter, similar petitions namely SCA No.1598 / 2000 and 3038 / 2000 to 3063 / 2000 were

preferred by the employees of the respondent No.2 on the similar ground. Special Civil Application No.1598 / 2000 was filed by the petitioners identically situated as petitioners and who had also given their options on condition of adding a condition that they may be absorbed in Class III service in the same pay scale which was given to them by the respondent No.2 company. On 25th April, 2000 in the same petition, this Court has directed the Government to look into the matter and see that as far as possible the grievance of the petitioners are redressed. Some of the petitioners filed their consent letters immediately. However, two persons involved in Special Civil Application No.1598 / 2000 gave their consent letters as late as in July and August, 2000 and they were absorbed in Class IV services of the State of Gujarat. Likewise, four other petitioners of SCA No.6365 / 1999 also gave their consent letters for being absorbed in Class IV service in July, 2000 and they are also absorbed in Class IV services. The present petitioners have also given consent letters on 7th November, 2000. However, on 1st November, 2000 the respondent Company gave an application to the Labour Commissioner for closure of the company. According to the case of the petitioners, no advance notice was given prior to 1st November, 2000. Thereafter, the Labour Commissioner has granted permission and then, in response to the application for review submitted by the Union and the matter has been referred for adjudication to the Industrial Tribunal. Civil Application No.11704 / 2000 filed in Special Civil Application No.6365 / 1999 was decided and interim relief granted in the said application earlier came to be vacated and therefore, being aggrieved thereof, the petitioners immediately preferred Letters Patent Appeal No.222/2001. Thereafter, the respondent No.2 has issued order of termination on 23rd March, 2001 and sending therewith retrenchment compensation and other benefits to the petitioners. Therefore, in the present petitions, the petitioner have challenged order of termination passed by the respondent No.2 and made further prayer to direct the respondents to consider the case of the petitioners for alternate employment in Class IV service as per their consent letter.

#. So far as Special Civil Application No.6365 / 1999 is concerned, wherein set of facts is identical as referred above and the prayer is made to direct the State Government to absorb the petitioners in the clerical post in the State Government service in the pay scale of Rs.950-1500 which is revised at Rs.3050-4500 and alternatively, it is also prayed to direct the State

Government to absorb the petitioners in Clerical Cadre in State Government service in the lower pay scale of Rs.775-1025 revised at Rs.2610-3540 and third prayer seeking directions on the respondent No.1 - State Government not to treat the petitioners as excess employees and further direct the respondents to consider the question of their option for absorption in Class III post in State Government service.

#. In affidavit-in-reply filed on behalf of the respondent No.1 - State Government, wherein the contention has been raised that the petitioners were required to file their option in the format within prescribed limit mentioned in the Public Notice. The public notice put by the company clearly indicates that the employment in GCEL - respondent No.2, shall continue till the Government is able to place them suitable. The employees cannot put their own conditions, while filing their option forms. Conditional option forms for alternative employment in the pay scale of Rs.950-1500 are liable for rejection. However, with a view to give them opportunity to get a permanent job in the Government. The petitioners were asked for their willingness to work in the lower grade but some of them had shown such willingness and as a result of which, they could be posted in different department of Government. It is further contended that in all, fourteen employees have been absorbed by the State Government whose names have been mentioned in Annexure-B along with reply. It is further pointed out by the State Government that there were no positions in Clerical Cadre available in the Grade of Rs.775-1025 and therefore, there is no possibility to absorb the petitioners in clerical cadre. It is also submitted by the respondent that the company does not have any such scheme to upgrade the employees after completion of nine years and therefore, they are not entitled to be posted in the pay scale of Rs.950-1500. The petitioners have filed conditional option forms contrary to the Government Circular dated 28th November, 1997. The category of the petitioners were accepted in the grade of Rs.775 - 1025 and accordingly the employees who were willing to be absorbed in the said scale and finally accepted the posting offered by the Government in the lower grade of Rs.775 1025 and they have joined different department of State Government as Class IV equivalent post. The State Government has also pointed out in the reply that Circular dated 28th November, 1997 the Government can post an individual who has opted for alternate employment, of course willingly as he has filled in the form after reading all the conditions mentioned in the

Alternate Employment Format in the same grade or in the lower grade and therefore, there is no violation of Articles 14 and 16 inasmuch as taking option for alternate employment is not compulsory, but voluntary. It is further pointed out that as per the Circular dated 28th November, 1997, if the Government could not post the incumbent, who has opted for Alternate Employment within one year, he has to go under voluntary retirement scheme. However, in the interest of the employees, the Government has not implemented such provision in toto and employees who were not given posting were allowed to continue in the company without any disturbance. All such employes are informed by the respondent No.2 Management accordingly that no positions are available in the grade of Rs.775-1025 in clerical cadre, Government has allowed them to continue with the respondent No.2. The Government has also made it clear in the reply that the petitioners are already informed that their services with the respondent shall continue with reference to their application opting for alternate employment in the Government and therefore, the question relieving them does not arise and no orders are required to be issued. It is also case of the respondents that according to Annexure-D letter dated 22nd October, 1999 by Deputy Secretary, Finance Department addressed to the Managing Director of the respondent No.2 informed that the petitioners being Junior Operator, are required to be continued in service with the Corporation as there was no possibility of absorption to the petitioners in the higher pay scale but they can be absorbed in the lower pay scale. Accordingly, Additional General Manager [P&A] of respondent No.2 informed the petitioners by letter dated 23rd October, 1999 that because no post is available with the State Government, they should remain continue with the Corporation / company. The respondent No.2 who has filed affidavit-in-reply almost on similar line of the State Government. It is necessary to note that the petitioner Nos.2, 4, 8 and 10 involved in this petition are already absorbed by the State Government in Class-IV service of the State Government. Though the case of the present petitioners, who have very identical case and similarly situated except the fact that the petitioners those who are absorbed, had given consent letter prior in point of time, whereas, the rest of the petitioners have given consent letter on 7th November, 2000. The petitioners gave consent letters to absorb then even in lower pay scale of Rs.2550-3200. In the mean time, during pendency of the main petition, Civil Application No.11704 / 2000 was preferred by the petitioners before this Court pending main petition, with prayer seeking directions on the State Government to

absorb the petitioners in Class - IV cadre in accordance with their consent letters and they should not be retrenched from services. In the said petition, ad-interim relief was granted by this Court on 24th December, 2000 directing the respondents not to compel present petitioners to apply for voluntary retirement scheme and the respondent were further restrained from retrenching the present petitioners from their service and terminating their services on any ground whatsoever. The ad-interim relief was heard by this this Court and vide order dated 21st March, 2001, this Court refused to continue the said ad-interim relief pending the present petition and vacated the ad-interim relief granted earlier. Against the order vacating the ad-interim relief, Letters Patent Appeal No.222/ 2001 filed on 23rd March, 2001, wherein the LPA Bench has passed the order on 3rd April, 2001 with direction to the respondents to keep five posts of Class IV cadre vacant for the present petitioner Nos.1, 3, 6, 7 and 9 who were appellants in Letters Patent Appeal, in the event of their success in the present petition. The State Government has filed affidavit-in-reply in Civil Application No.11704 / 2000, wherein contention has been raised by the respondent Government that who were on surplus list and in case time period was not elapsed, the Government decided to continue such employees on surplus list and it has been clearly mentioned that option for alternate employment in accordance with Circular dated 28th November, 1997. Therefore, scheme for alternate employment was continued for the employees who were on surplus list as on 28th July, 1999 for consideration of alternate employment scheme and they were on surplus list till October, 1999. Therefore, according to the respondent - State Government, that applications of one year time limit will continue to apply to surplus list, otherwise, the petitioner were continued on surplus list till October, 1999 and thereafter, the petitioners were not entitled for alternate employment as per the Second Resolution dated 28th July, 1999. It is come on record that consent letters have been given by the petitioner Nos.2, 4, 8 and 10 to the State Government respectively on 30th May, 2000, 14th June, 2000, 14th June, 2000 and 17th June, 2000 and they were given alternate employment respectively in lower pay scale but the rest of the petitioners did not give such option and therefore, they could not be offered alternate employment. It is also found that the permission application for closure is filed by the respondent No.2 before the Labour Commissioner on 1st November, 2000 and thereafter, the petitioners have given consent letters on date 7th November, 2000 to absorb them in lower pay scale of

Rs.2550-3200 and therefore, their applications dated 7th November, 2000 have not been considered by the State Government. Not only that but no employment has been offered to any employee of the respondent No.2 after 1st November, 2000. The Labour Commissioner has allowed the company to close down and therefore, voluntary retirement scheme and alternate employment scheme is no longer in operation qua petitioners. In second affidavit-in-reply filed in very Civil Application, the respondent State Government has submitted that alternate employment given to all the employees of the respondent No.2, were prior to 1st November, 2000. The company had applied for permission of closure on 1st November, 2000 on very date, all the employes to be paid retrenchment benefits only but inspite of this, the Government considered the case on humanitarian ground and offered VRS to all employees including 45 employees who were on surplus list. Therefore, the Government cannot make any discrimination by offering alternate employment to the some of the employees and by giving VRS to the remaining employees. It was further clarified that there are vacancies of class 4 posts of the pay scale of Rs.2550-3200 and there were 45 employees on the surplus list of different categories of different pay scales. Therefore, the Government is not in a position to give alternate employment to all the 45 employees and therefore, Government decided to offer VRS to all 45 employees on surplus list. Application dated 1st November, 2000 filed by the respondent for closure before the Labour Commissioner which compelled the petitioners to accept lower pay scale and therefore, according the State Government, it is too late for alternate employment as company already applied for closure on 1st November, 2000.

#. Learned advocate Mrs.K.A.Mehta for petitioners has submitted that in pursuance of the Government Resolution dated 28th November, 1997, the petitioners have filled up the form of option and their names have been registered in the surplus list with the Finance Department of the State Government. Their names were continued in said surplus list with the State Government. In the second Circular dated 28th July, 1998, wherein, it is made clear that those public undertakings in which partly voluntary retirement scheme and partly surplus employment scheme is made applicable and some of the employees have already been given alternate employment, in such public undertakings those who have registered themselves in the surplus cell by virtue of earlier Circular dated 28th November, 1997, will continue to get advantage of the said scheme of alternative employment. Learned advocate

Mrs.Mehta has further submitted that in the subsequent circular issued in 1999, no further period is provided and such scheme of alternative employment is remained to be continued unless persons whose names are mentioned or included in the surplus list, are absorbed by the State Government. Learned advocate Mrs.Mehta has submitted that four persons involved in this very petition have been absorbed by the State Government in October, 2000. That these employees who have absorbed in October, 2000, similarly situated with the petitioners, were also in the surplus list but the different in their case is, they had given consent letters with request to be absorbed in lower pay scale in July and August, 2000, whereas, in case of the present petitioners, who have given consent letters on 7th November, 2000. Therefore, case of the petitioners has not been considered by the respondent. Learned advocate Mrs.Mehta has submitted that similarly the petitioners gave consent letter on 7th November, 2000 subsequent to Permission Application dated 1st November, 2000 have no legal adverse effect on their legal right to be absorbed as per the Circular dated 28th November, 1997. Therefore, learned advocate Mr.Mehta submits that contention which has been raised by the respondent in reply to the effect that consent letter has been given subsequent to permission application and therefore case of the petitioners has not been considered by the respondent, is not well founded. Learned advocate Mrs.Mehta, therefore, submits that except this difference, present petitioners are similarly situated at par with said four persons who have been absorbed by the State Government. She has also submitted that one year time limit as prescribed in the Circular dated 27th November, 1997 is not implemented in toto for the petitioners. This fact has been made clear by the State Government in their reply to the effect that the Deputy Secretary of the Finance Department has wrote a letter addressed to the Managing Director of the respondent No.2 and accordingly on behalf of the respondent No.2, this fact has been informed by the respondent No.2 to the petitioners. Therefore, the petitioners remained continue in the surplus list and they are entitled to give consent to be absorbed in lower pay scale and it was duty of the respondent Government to consider such consent letter for absorbing the present petitioners in Class IV post. But said request has been turned down, which ultimately resulted into termination of the petitioners by order dated 23rd March, 2001. However, learned advocate Mrs.Mehta has submitted that permission application was filed by the respondent No.2 on 1st November, 2000 and thereafter, the Labour Commissioner the specified authority has granted permission to the

respondent No.2 and then the matter was reviewed at the instance of the Union and referred for adjudication to the tribunal and the matter is pending before the tribunal. Mrs.Mehta has also submitted that according to the provisions made under Section 25[o] of the I.D.Act, the order granting permission is not final unless and until the Reference will be decided by the concerned tribunal. Therefore, the order of termination which has been passed by the respondent No.2 dated 23rd March, 2001 is not final unless the Reference is decided by the Industrial Tribunal. Therefore, she submits that once the name of the petitioners are continued in surplus list as per the subsequent Circular issued in 1999, then termination of service of the petitioners, inspite of having letter / instructions from the Government to the effect that their names will remain continue in the surplus list and they are continued in the company and they are not being compelled to accept voluntary retirement scheme by the State Government, is illegal and contrary to the scheme. Therefore, learned advocate Mrs.Mehta submits that the petitioners are entitled to absorption as per the Circular dated 28th November, 1997 and on the basis of the consent letter dated 7th November, 2000 in the scale of Class-IV category. She also submits that the order of termination itself is contrary to law as the names of the petitioners were continued in the surplus list, then the respondent No.2 did not have any need to pass such termination order against the petitioners.

#. Learned AGP Mr.H.D.Dave for respondent State Government has raised contentions that the petitioners are not having any legal right to be absorbed in the State Government Service in class-IV cadre. Merely having name in the surplus list, cannot be considered to be legal right of the petitioner and this Court cannot be direct the Government to absorb the petitioners but at the most, the Government can be directed to consider the case of the petitioner but no mandamus can be issued on the respondent State Government to absorb the petitioners. Mr.Dave, learned AGP has further pointed out that there was prescribed time limit of one year as per the Government Circular dated 28th November, 1997 that if any employees' name is registered in the surplus list of those who have opted for alternate employment, then, such name remains continued in surplus list for one year only and if the Government is not able to absorb such employee, then automatically surplus list will come to an end and such employees will be required to opt for voluntary retirement scheme. Therefore, according to learned AGP Mr.Dave, the prescribed time limit got over

in October, 1999 and hence, the petitioners are not entitled to absorption as a matter of right in the State Government Service. Learned AGP Mr.Dave further pointed out that inspite of various letters addressed to the petitioners by the State Government as well as respondent No.2 informing the petitioners that it is not possible to absorb the petitioners in Class-III but the petitioners did not given their consent for absorption in Class IV cadre but as such, no response is given by the petitioners till closure application is filed by the respondent No.2. Therefore, subsequent to closure application, consent letter dated 7th November, 2000 has been given by the petitioners based on the compelling circumstances as now the company will be closed and therefore, on account of this apprehension, the petitioner realised the difficulty and hardships and ultimately, given their consent letter on 7th November, 2000. Therefore, learned AGP Mr.Dave submits that the consent letter submitted after permission application cannot be considered by the Government as it was decided to close down the company respondent No.2. Therefore, the petitioners are not entitled to absorption in the State Government as per Government Circular dated 28th November, 1997. Learned AGP Mr.H.D.Dave for respondent State has also submitted that those persons other than the petitioners have been absorbed by the State Government as they had given consent letters in the month of July / August, 2000. Therefore, at the relevant time, the petitioners had not given consent letter and hence, their cases were not considered by the State Government. In light of above factual aspects, learned AGP Mr.Dave submits that conduct of the petitioners is required to be considered that after realising the difficulty in true spirit that the company will be closed, the petitioner have given consent letters on 7th November, 2000 and such consent letters now cannot be considered by the State Government as it was subsequent to the permission application. Therefore, the petitioners have no any legal right to be absorbed in the State Government Service and hence, these petitions require to be rejected accordingly.

#. Learned advocate Mr.C.L.Soni appearing on behalf of the respondent No.2 company has mostly adopted submissions advanced by learned AGP Mr.H.D.Dave for respondent State Government and further pointed out that the company has been ordered to be wound up pursuant to the order passed by this Court and therefore, the respondent No.2 has passed termination order. Therefore, he submits that the termination orders dated 23rd March, 2001 are rightly passed by the respondent No.2 on the

basis of the permission granted by the specified authority to close down the industrial unit. Therefore, according to learned advocate Mr.Soni, the petitioners have no any legal right to be absorbed in the State Government Service merely they remained continued with the company. He also submitted that on the basis of grant of the permission application, services of the petitioners came to be terminated in accordance with law by the respondent No.2 and therefore, the termination orders are legal and valid and in case, if the petitioners want to challenge the termination order, they can raise industrial dispute before the appropriate authority under the machineries of I.D.Act.

##. I have considered submissions of the learned advocates for the parties. Before deciding the short question involved in these two petitions, in view of this Court, some undisputed facts between the parties require to be referred as under :-

It is not in dispute that the petitioners were working with the respondent No.2 company in the post of Junior Operator - E and were appointed during the period from 1987 - 91. In pursuance of the Government Circular dated 28th November, 1997, the petitioners were filled up option form of alternative employment and their names were registered in the surplus list of the Finance Department of the State Government along with the other persons and even like persons similarly situated with petitioners, who have been absorbed in the State Government Service by the respondent. As per the Circular dated 28th November, 1997 issued by the Government, surplus list remained continued for a period of one year and during this period, if the Government is not able to absorb the employees whose names registered in the surplus list, then such employees to be given benefits of voluntary retirement scheme. However, in the affidavitin-reply filed by the State Government, it is made clear that the inspite of this duration time limit of one year, in the larger interest of the employees, this condition has not been implemented in toto against the petitioners and their names were continued in surplus list and they also remained continued with the company so long they are not absorbed by the State Government. Therefore, this condition mentioned in the Circular dated 28th November, 1999 is not fully implemented against the petitioners by the State Government as per the reply and accordingly, names of the petitioners remained continued in surplus list. It is also not disputed that initially all the petitioners including the four persons had claimed equal pay scale from the Government and they may

be given posting in Class III cadre but they may be paid salary of Class IV cadre. However, the State Government has refused the demand of the petitioners. It has also come on record that the State Government has pointed out to the petitioners that it is not possible to give posting to the petitioners in Class III post while giving salary of Class IV post. This aspect is also made clear in correspondence as well as reply of the respondent. Thereafter, four other persons those who have given consent letters in July / August, 20000 with request to the State Government that they are prepared to be absorbed in Class IV cadre as per the suggestion made by the State Government. On the basis of the consent letters given by these four persons, they have been absorbed by the State Government in July, August and October, 2000 in class IV post. At that relevant time, the petitioners had not given consent letter. But their names remained continued in the surplus list of alternate employment in the State Government. Thereafter, the respondent No.2 company has submitted application under Section 25[O] of the I. D.Act, 1947 seeking permission to close down the company before specified authority on 1st November, 2000. Thereafter, immediately the petitioners have given consent letters to the State Government on 7th November, 2000 with request to the State Government to be absorbed the present petitioners in Class IV post. However, said request of the petitioners or consent letters of the petitioners have not been accepted by the State Government only on the ground that it is subsequent to the permission application. These are undisputed facts between the parties.

##. So far the contention raised by learned AGP Mr.H.D.Dave that one year criteria to remain the surplus list in existence, is not correct, only on the ground that there is subsequent Resolution dated 28th July, 1999 issued by the State Government, wherein it is made clear that scheme of alternate employment as per the surplus list will remain continue without any time limit or without any further condition. This aspect has been made clear by the State Government in reply that one year criteria is not implemented in toto against the petitioners and therefore, their names remained continued in the surplus list even beyond the one year time limit which expired in October, 1999. Therefore, contention raised by learned AGP Mr.Dave cannot be accepted. This Court also considers it fit to refer one more factual undisputed aspect of the matter that names of four persons those who have been absorbed by the State Government, had given consent letters in July/ August,

2000, meaning thereby, their names remained continued in surplus list when they had given consent letters to the State Government. Therefore, the contention raised by learned AGP Mr.Dave as to existence of the surplus list for a period of one year cannot be accepted. Now the question requires to be examined by this Court, whether any legal adverse effect on the legal right of the petitioners whose names remained in surplus list upto 7th November, 2000 for submitting consent letter to State Government because of permission application was filed by the respondent No.2 on 1st November, 2000. If it is alternatively considered, merely the respondent No.2 has filed permission application to close down the company on 1st November, 2000, could have any adverse legal effect on the legal right of the petitioners whose names remained continued in surplus list and submitted the consent letters to the State Government on 7th November, 2000. Learned AGP Mr.H.D.Dave for respondent State has raised the contention that the consent letters were given by the petitioners subsequent to permission application dated 1st November, 2000 and therefore, same has not been rightly considered by the State Government. However, it is pertinent to note that learned AGP Mr.Dave is failed to point out as to why the State Government has not considered the consent letters of the petitioners and what would be effect of filing permission application on 1st November, 2000 on the right of the petitioners to submit their consent letters to the respondent State Government. Learned AGP Mr.Dave is not able to convince this Court in respect of any legal effect of filing permission application before specified authority by respondent No.2 on 1st November, 2000. In view of above contention raised by learned AGP Mr.Dave, it is necessary to consider the relevant provisions of Section 25[O] of the I.D.Act, 1947, wherein procedure for closing down the an undertaking has been prescribed. The relevant sub sections [1] to [5] of Section 25[O] are reproduced as under :-

25[O] Procedure for closing down an undertaking:-

[1] An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the

representatives of the workmen in the prescribed manner :

Provided that nothing in this sub section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work,

[2] Where an application for permission has been made under sub-section [1] the appropriate Government, after making such enquiry as it thinks fir and after giving a reasonable opportunity of being heard to the employer, the workmen and persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interest of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

[3] Where an application has been made under sub section [1] and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall, be deemed to have been granted on the expiration of the said period of sixty days.

[4] An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section [5], be final and binding on all the parties and shall remain in force for one year from the date of such order.

[5] The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub section [2] or refer the matter to the tribunal for adjudication;

Provided that where a reference has been made to a Tribunal under this sub section, it shall pass an award within a period of thirty days from the date of such reference.

##. Thus, bare perusal of Section 25[O] makes clear that

in the event an employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government. Thereafter, the specified authority is required to pass appropriate orders after giving reasonable opportunity to employer as well as workmen and the persons interesting in such closure. If the specified authority does not communicate the order granting and / or refusing the grant to the employer within a period of sixty days from the date of such application is made, the permission applied for shall, be deemed to have been granted on the expiration of the said period of sixty days. An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section [5], be final and binding on all the parties and shall remain in force for one year from the date of such order. The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub section [2] or refer the matter to the tribunal for adjudication. In light of above set of provisions, when the application for permission to close down the industrial unit has been filed on 1st November, 2000, in that case, upto ninety days closure did not come into effect. Therefore, naturally, the petitioners remained in service with the respondent No.2 as well as remained continued in surplus list. Merely filing of permission application except upto completion of sixty days period, deeming provisions would not apply to the order even upto 60 days and therefore the company remained in operation and the same cannot be considered to be closed, then the specified authority has power to refer the matter suo moto or on such application either by the employer or employee to the Industrial Tribunal unless and until the order under sub section [5] of Section 25[O] is passed, the order of specified authority cannot be considered to be final. Thus, in view of mandatory provisions of Section 25[O] of the Industrial Disputes Act, 1947, according to my opinion, consent letters given or submitted by the petitioners subsequent to the permission application having no adverse effect on the legal right of the petitioners which accrued pursuant to the Circular dated 28th November, 1997 to remain in surplus list until they were absorbed by the State Government. It is also necessary to note that the petitioners had filled up the option form for alternate employment and their names are required to be registered in surplus list with the Finance Department. Said surplus list was continued with

the State Government. The condition of one year is not implemented in toto as per the reply filed by the State Government and even considering the conduct of the State Government accepting consent letters from other four petitioners submitted in July / August, 2000, meaning thereby, names of the present petitioners were continued in the surplus list. If the names of the present petitioners along with said four persons who are absorbed, are continued in surplus list upto November, 2000 as per the Government Resolution dated 28th November, 1997 read with second Resolution dated 28th July, 1999, then the legal rights of the petitioners to be absorbed by the State Government even they had given consent letters to the State Government, would not have affected adversely in any way. It is also necessary to note that when the names of the petitioners registered in surplus list remained in force upto 7th November, 2000, the respondent Government has not given any intimation to the petitioners that their names are removed or cancelled from the surplus list. No such intimation has been given by the State Government to the petitioners, meaning thereby, the petitioners remained continued in the surplus list even on 7th November, 2000. Therefore, the petitioners are entitled to give consent letters to be absorbed in Class-IV post of the State Government and on such occasion, it was the duty of the respondent Government to consider such request of the petitioners on the same line as considered by the State Government in case of four petitioners involved in this petition. But the Government has turned down the request and rejected the same which can be said to be arbitrary action of the State Government, clearly in violation of Article 14 and 16 of the Constitution of India.

##. At this juncture, it is also pertinent to note that initially, in Civil Application No.11704 / 2000 in Special Civil Application No.6365 / 1999, this Court has granted ad-interim relief by order dated 26th December, 2000 with direction to the opponents not to compel the present petitioners to apply for voluntary retirement scheme. The opponents were further restrained from retrenching the applicants from terminating services of the applicants on any ground whatsoever till returnable date. On 26th December, 2000 this Court has protected the petitioners from terminating the services of the petitioners by respondent and not to compel the petitioners to accept voluntary retirement scheme. This ad-interim relief came to be vacated by this Court on 21st March, 2001. Ultimately this order vacating the ad-interim relief challenged by the petitioner before the Division Bench of this Court in Letters Patent Appeal

No.222/ 2001. In this LPA, Civil Application No.3567 / 2001 was also preferred, wherein the Division Bench of this Court [Coram : Hon'ble the Chief Justice D.M. Dharmadhikari, CJ and Mr.Justice P.B.Majmudar, J. has passed order on date 3rd April, 2001 directing the respondents, its servants and agents to keep five posts of Class - IV employees vacant for the appellants, in the event of their success in this case. Thereafter, this Letters Patent Appeal has been finally heard and disposed of by the Division Bench of this Cout on date 26th June, 2001, whereby the division bench has directed to continue interim order dated 3rd April, 2001 directing the respondents, its servants and agents to keep five posts of Class - IV employees vacant for accommodating the appellants who have been retrenched as employees of erstwhile Gujarat Communications and Electronics Ltd. The division bench further directed that it will be open to the State Government to consider their candidature for the five available posts, subject to their eligibility. This order remained is still continued as per the averments made in the Rejoinder filed by the petitioners. Therefore, in pursuance of the directions issued by the Division Bench of this Court in Letters Patent Appeal No.222 / 2001 and accordingly five posts of Class-IV employees are kept vacant with the State Government. In light of these facts, it is necessary to note one more aspect that six Jobbers working in the very company respondent No.2 whose services were sought to be terminated and who were being compelled to take Voluntary Retirement Scheme had preferred identical petition being Special Civil Application No.7130 / 1999. However, this petition has been summarily rejected, against which, said six petitioners had preferred Letters Patent Appeal being LPA No.1324 / 1999 and said LPA is also finally decided by this Court [Coram : Mr.Justice M.R.Calla and N. G. Nandi, JJ.] by order dated 17th August, 2001, wherein also, identical issue has already been examined in respect of respondent No.2 company and the Division Bench has directed the State Government and the Company to pass appropriate orders with regard to these six jobbers for their absorption in the Government. The State Government has taken stand before the Court that said Jobbers were working in the lower pay scale of Class IV cadre and therefore, they cannot be absorbed even though, this Court has directed that they may be absorbed in existing pay scale in Class IV service of the Government. However, the distinction in between the present case of the petitioners and the case of the Jobbers that the petitioners were in higher pay scale in the company compared to Class IV service cadre of the Government, whereas the Jobbers were in the lower pay scale but fact

remains that the Jobbers were in the surplus list and their case was considered by the Division Bench by order dated 17th August, 2001 issued directions on the Government.

##. At this stage, the decision of the Apex Court in case of G. GOVINDA RAJULU VS. THE ANDHRA PRADESH STATE CONSTRUCTION CORPORATION LTD. reported in AIR 1987 SC 1801 relied upon by learned advocate Mrs.Mehta for petitioners is much relevant, wherein it is observed that termination of services of the employees of the A.P.State Construction Corporation Ltd, sought to be terminated on account of closure of Corporation, Supreme Court directed to continue employees on same terms and conditions either in the Government Departments or in the Government Corporations.

##. Therefore, considering the facts and circumstances of the present case and the fact that almost facts are not in dispute between the parties, now the only question is whether the petitioners are having legal right to be absorbed in Government Service in Class IV cadre on the basis of the consent letter given by the petitioners on 7th November, 2000. As discussed above, according to my opinion, the petitioners are entitled and having legal right accrued on the basis of two Government Circulars dated 28th November, 1997 and 28th July, 1999 as their names remained continued in surplus list till 7th November, 2000 and even prior to this period, the State Government has not cancelled their names from the surplus list. Therefore, merely the respondent No.2 has filed permission application on 1st November, 2000 would not have affected the legal rights of the petitioners adversely in any manner for their claim for absorption in Class IV post as peer the consent letter dated 7th November, 2000 in State Government Service. Therefore, once the petitioners are entitled to be absorbed by the State Government in Class IV post as per their consent letter dated 7th November, 2000, result thereof, termination order dated 23rd March, 2001 passed by the respondent No.2 on the basis of the order passed by the Specified Authority granting permission, require to be quashed and set aside because the said orders terminating services of the petitioners having no legal effect once their names remained continued in surplus list, then question of terminating services does not arise. Therefore, order of termination dated 23rd March, 2001 passed against the petitioners requires to be quashed and set aside.

##. In the result, both these petitions are allowed. It

is directed to the respondent State Government to forthwith absorb the petitioners as per their consent letters dated 7th November, 2000 in Class IV posts which have kept vacant as per order passed by the Division Bench of this Court in LPA No.222 / 2001 dated 3rd April, 2001 and 26th June, 2001. The order of terminating services of the petitioners passed by the respondent No.2 dated 23rd March, 2002 is also hereby quashed and set aside.

Accordingly, both these petitions stand allowed. Rule is made absolute accordingly. NO order as to costs. Direct Service to petitioners is permitted.

Date : 17-4-2002 [H.K.Rathod, J.]

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